

EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-cv-5944 SC

MDL No. 1917

This Document Relates to:

21 *Sharp Electronics Corp., et al. v. Hitachi Ltd., et al.*,
Case No. 13-cv-1173 SC

**SHARP ELECTRONICS
CORPORATION AND SHARP
ELECTRONICS
MANUFACTURING COMPANY OF
AMERICA, INC.'S OBJECTIONS
TO THE DIRECT PURCHASER
PLAINTIFF CLASS SETTLEMENT
WITH HITACHI AND SAMSUNG
SDI DEFENDANTS**

1 Sharp Electronics Corporation (“SEC”) and Sharp Electronics Manufacturing
2 Company of America, Inc. (“SEMA”) (collectively, “Sharp”) respectfully submit these
3 Objections to the proposed Direct Purchaser Plaintiff (“DPP”) class settlement with the Hitachi
4 and Samsung SDI defendants (collectively, “Defendants”).¹ Sharp further requests to be heard at
5 the fairness hearing scheduled to occur on August 22, 2014.

PRELIMINARY STATEMENT

The motion for approval of class settlement that is before the Court is based on the express representation and assumption by DPP class counsel that Sharp has been excluded from the class. *See* Direct Purchaser Plaintiff Class Mot. for Final Approval, MDL Dkt. No. 2728 at 19 n.2. In light of yesterday's order, that is no longer the case. We respectfully submit that a different settlement that includes Sharp as a class member should not be approved without Sharp having been given an opportunity to object to the settlement. Sharp has three objections.

First, DPP class counsel (“DPP Counsel”) has represented to the Court that DPP
Counsel was not representing Sharp’s interests when it negotiated the settlement. Class counsel
must be exercising a fiduciary duty to class members in order to protect the interests of class
members, and the Court has a duty to insure that class counsel is adequately representing the
interests of the class members when negotiating a settlement. Here, class counsel has represented
unequivocally to the Court that this did not occur. DPP Counsel did not intend for Sharp to be
included in the settlement class at issue. DPP Counsel has explicitly stated so, and further stated
that it would have negotiated a different settlement if Sharp was to be included in the settlement
class. *See* Direct Purchaser Plaintiffs’ Response to Dell and Sharp Administrative Motions, MDL
Dkt. No. 2715 at 1, 3-4 (“DPP Response”). Under these unusual circumstances – where class
counsel has represented that it did not seek to protect the interest of one of the potential class

²⁵ ¹ “Hitachi” refers collectively to Hitachi, Ltd.; Hitachi Displays, Ltd. (n/k/a Japan Display Inc.);
²⁶ Hitachi America, Ltd.; Hitachi Asia, Ltd.; and Hitachi Electronic Devices (USA) Inc. “Samsung
²⁷ SDI” refers collectively to Samsung SDI Co. Ltd. (f/k/a Samsung Display Devices Co., Ltd.);
Samsung SDI America, Inc.; Samsung SDI Brasil, Ltd.; Tianjin Samsung SDI Co., Ltd.; Samsung
Shenzhen SDI Co., Ltd.; SDI Malaysia Sdn. Bhd.; and SDI Mexico S.A. de C.V.

1 members – the settlement cannot be fair and reasonable. The fundamental premise that Sharp’s
 2 interests as a class member were being protected by class counsel is not present.

3 Second, in this circumstance, it is not surprising that the compensation provided by
 4 the settlement is inadequate. Sharp’s estimated single damages from Hitachi alone exceed the
 5 entire value of the DPP Class settlement with Hitachi, and Sharp’s single damages from Samsung
 6 SDI are over two-thirds of the DPP Class settlement with Samsung SDI. If Sharp is forced to join
 7 the settlements, Sharp would recover an estimated only 0.39% of its direct CRT purchases from
 8 Hitachi and Samsung SDI.

9 Third, Sharp is differently situated from most, if not all, other members of the DPP
 10 settlement class, and Sharp’s different situation was not adequately represented in the DPP class
 11 settlement negotiations. Other class members are primarily purchasers of CRT finished products,
 12 such as televisions and monitors. Sharp is one of the only plaintiffs in the case that exclusively
 13 purchased CRTs from the Defendants and did not purchase CRT finished products from the
 14 Defendants. The rest of the DPP Class – which consists mostly of indirect purchasers – would
 15 face additional legal hurdles and risks that Sharp, as a direct purchaser of CRTs, would not.
 16 These litigation risks that Sharp does not face likely reduced the DPP class settlement.

17 As a result, the class settlement is unfair, unreasonable, and inadequate, and should
 18 not be granted final approval.

19 BACKGROUND

20 Sharp is a direct purchaser of CRTs and was harmed by Defendants due to their
 21 participation in a conspiracy to artificially raise or maintain the prices of CRTs. Sharp suffered
 22 this harm through the purchase of approximately \$334.8 million in overcharged purchases from
 23 Defendants. Sharp did not join any of the prior class settlements in this litigation, nor, as made
 24 clear in Sharp’s prior briefing,² did it intend to join this class settlement with Defendants.

25
 26 ² See generally Sharp Electronics Corporation and Sharp Electronics Manufacturing Company of
 27 America, Inc.’s Administrative Motion to Confirm Its Opt-Out Request or, in the Alternative,
 Enlarge Time for Sharp to Opt Out of Class Settlements, MDL Dkt. No 2698 (“Sharp’s Opt-Out
 Motion”).

1 DPPs entered into separate settlements with Samsung SDI and Hitachi on
 2 November 29, 2013 and February 11, 2014 respectively. Both settlements release claims by class
 3 members against Defendants in exchange for compensation from a settlement fund calculated on
 4 a *pro rata* basis determined by the amount of each claimant's purchases of CRTs or CRT finished
 5 products. *See* Direct Purchaser Plaintiffs' Mem., MDL Dkt. No. 2728, Exs. 1-2. The Court
 6 granted preliminary approval of both settlements and scheduled a hearing on the final approval of
 7 the settlements for August 22, 2014 to determine, among other things, “[w]hether the proposed
 8 settlements are fair, reasonable, and adequate and should be granted final approval.” Order
 9 Granting Class Certification, MDL Dkt. No. 2534 at 5.

10 On July 23, 2014, Sharp filed a motion seeking confirmation that it was not a
 11 member of the class settlements with Defendants or in the alternative to extend the time for Sharp
 12 to opt out of the settlements. Sharp's Mot. to Confirm Opt-Out Request, MDL Dkt. No. 2698.
 13 On August 20, the Court denied that motion. Order on Sharp's Administrative Motion, MDL
 14 Dkt. No. 2746 (the “Order”) at 13. As a result, Sharp has potentially become subject to the terms
 15 of the settlements with Defendants despite having taken no part in, or having been considered
 16 during, negotiation of those settlements. Accordingly, Sharp objects and requests to be heard at
 17 the August 22 hearing on final approval of the settlements.

18 **ARGUMENT**

19 The motion for approval of class settlements that is before the Court is based on
 20 the express representation and assumption by DPP class counsel that Sharp has been excluded
 21 from the class. DPP Counsel has represented to the Court that it did not represent Sharp's
 22 interests or purport settle Sharp's claims during negotiation of the settlements with Hitachi and
 23 Samsung SDI. *See* DPP Response at 1, 3-4. Rather, counsel for the settlement class was at all
 24 times operating with the understanding that Sharp was *not* a member of the settlement class. *See*
 25 DPP Response at 2; Declaration of R. Alexander Saveri ¶ 8, MDL Dkt. No. 2715-1 (filed July 28,
 26 2014) (stating that DPP counsel “did not settle . . . Sharp's claims”).

27 In light of yesterday's Order, however, that may no longer be the case. *See* Order
 28 at 13. As a result, the class settlements are no longer fair, reasonable, or adequate for at least

1 three reasons: (1) DPP class counsel admittedly did not represent Sharp's interests when
 2 negotiating and agreeing to the proposed class settlement, and Sharp thus has not been adequately
 3 represented; (2) the proposed settlements with Hitachi and Samsung SDI undercompensate Sharp
 4 for the harm it suffered due to the conspiracy; and (3) the settlements fail to account for plaintiffs
 5 like Sharp with stronger claims.³ A different class settlement that includes Sharp should not be
 6 approved without Sharp having been given an opportunity to object to the settlement.

7 **I. Sharp Was Not Adequately Represented by DPP Class Counsel**

8 First, DPP Counsel has represented to the Court that DPP Counsel was not
 9 representing Sharp's interests when it negotiated the settlement. Class counsel must be exercising
 10 a fiduciary duty to class members during settlement negotiations in order to protect the interests
 11 of class members. *Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d 1157, 1168 (9th
 12 Cir. 2013) ("We hold that the district court abused its discretion in approving this settlement
 13 where the class representatives and class counsel did not adequately represent the interests of the
 14 class."); *Staton v. Boeing Co.*, 327 F.3d 938, 961 (9th Cir. 2003) (reversing approval of settlement
 15 where "we are somewhat uneasy, reading the settlement as a whole, about whether in reaching the
 16 settlement, class counsel adequately pursued the interests of the class as a whole"); *In re*
 17 *California Micro Devices Sec. Litig.*, 168 F.R.D. 257, 260 (N.D. Cal. 1996) ("A critical factor in
 18 determining whether a settlement is worthy of court approval under FRCP 23(e) is whether the
 19 class has been 'fairly and adequately' represented by the class representative during settlement
 20 negotiations."). The Court has a duty to insure that class counsel is adequately representing the
 21 interests of the class members when negotiating a settlement. *Diaz v. Trust Terr. of Pac. Islands*,
 22 876 F.2d 1401, 1408 (9th Cir. 1989) ("The district court must ensure that the representative
 23 plaintiff fulfills his fiduciary duty toward the absent class members, and therefore must inquire
 24 into the terms and circumstances of any dismissal or compromise to ensure that it is not collusive
 25 or prejudicial."); *Ferrington v. McAfee, Inc.*, 10-CV-01455-LHK, 2012 WL 1156399 at *5 (N.D.

26
 27 ³ For the reasons stated in Sharp's Opt-Out Motion, Sharp also contends that notice to class
 28 members was inadequate.

1 Cal. Apr. 6, 2012) (“[T]he Federal Rules of Civil Procedure have vested with the court the duty to
 2 oversee the final approval of all certified class settlements.”).

3 Here, class counsel has represented unequivocally to the Court that this did not
 4 occur. DPP Counsel and the Defendants themselves did not intend for Sharp to be included in the
 5 settlement class at issue. DPP Counsel has expressly stated so, and further stated that it would
 6 have negotiated different settlements if Sharp was to be included in the settlement class. *See*
 7 Direct Purchaser Plaintiffs’ Response to Dell and Sharp Administrative Motions, MDL Dkt. No.
 8 2715 at 1, 3-4 (“DPP Response”). As DPP Counsel stated in the declaration supporting Sharp’s
 9 Opt-Out Motion, “[b]ecause Dell and Sharp were litigating their own cases and had opted out of
 10 all previous class settlements, DPPs did not include their purchases in their settlement analysis. It
 11 was clearly understood during settlement negotiations with both Hitachi and Samsung SDI that
 12 Dell and Sharp were not in the class. In other words, DPPs did not settle Dell or Sharp’s claims.”
 13 Declaration of R. Alexander Saveri ¶ 8, MDL Dkt. No. 2715-1 (filed July 28, 2014) (emphasis
 14 added); Declaration of Kenneth A. Gallo in Support of Sharp’s Motion to Enlarge Time (“Gallo
 15 Decl.”) ¶ 13.

16 II. The Proposed Settlement Fails to Adequately Compensate Sharp

17 The proposed settlement amounts also undervalue the harm to Sharp once Sharp’s
 18 purchases are included. In this Circuit, “the primary purpose of the court approval requirement of
 19 Fed. R. Civ. P. 23(e) is to protect the interests of class members who may not have received due
 20 consideration by those negotiating the settlement.” *Davis v. City & Cnty. of San Francisco*, 890
 21 F.2d 1438, 1444 n.5 (9th Cir. 1989). Sharp would not receive due consideration under these
 22 settlements. Sharp purchased approximately \$130.9 million of CRTs from Hitachi entities during
 23 the overcharge period. Gallo Decl. ¶ 8. Sharp also purchased approximately \$203.9 million of
 24 CRTs from Samsung SDI entities during the overcharge period. *Id.* ¶ 9. Sharp’s expert, Dr. Jerry
 25 Hausman, has calculated the single damages from these purchases at \$14.1 million from Hitachi
 26 and at \$22.5 million from Samsung SDI. *Id.* ¶ 11. Collectively, therefore, Sharp is entitled to
 27 \$36.6 million in single damages from Hitachi and Samsung SDI, or **\$109.8 million in treble**
 28

1 **damages** based upon a total of \$334.8 million in CRT purchases during the overcharge period.

2 *Id.* ¶ 10.

3 The class settlements with Hitachi and Samsung SDI disregarded the volume of
 4 purchases by Sharp when they were negotiated. The *total* class settlement with Hitachi of \$13.45
 5 million is *less* than Sharp's single damages from Hitachi purchases alone. *Id.* ¶ 11. Likewise,
 6 Sharp's single damages against Samsung SDI of \$22.5 million would constitute over *two-thirds*
 7 of the \$33 million class settlement with Samsung SDI. *Id.* By his own representation, the DPP
 8 Counsel did not represent Sharp's interests when negotiating the DPP Class settlements with
 9 Hitachi and Samsung SDI.

10 The prejudice to Sharp would be severe if Sharp were forced to accept a share of
 11 the DPP Class's proposed settlements with Hitachi and Samsung SDI. DPP Counsel has not
 12 disclosed the total volume of commerce on which the Class negotiated settlements with the
 13 Hitachi Defendants and the Samsung SDI Defendants, or what Sharp's share in those settlements
 14 would have been had counsel for the Class negotiated to settle Sharp's claims. But based on the
 15 best information currently available, Sharp estimates that it would receive distributions of
 16 approximately \$500,000 from the Class settlement with Hitachi and \$800,000 from the Class
 17 settlement with Samsung SDI. *Id.* ¶ 14. Sharp estimates that its recovery from the settlement
 18 fund, therefore, would amount to approximately \$1.3 million – 0.39% of Sharp's total CRT
 19 purchases from Hitachi and Samsung SDI. *Id.* ¶ 15. The settlements fail to adequately
 20 compensate Sharp for the vast overcharges that resulted from the CRT conspiracy.

21 **III. The Settlements Fail to Account for Differently Situated Plaintiffs**

22 Sharp is differently situated from most, if not all, other members of the DPP
 23 settlement class. Other class members are, as the Court has stated, "in fact indirect purchasers for
 24 purposes of antitrust standing" that primarily purchased CRT finished products, such as
 25 televisions and monitors. Order Granting in Part and Denying in Part Defs.' Joint Mot. for
 26 Summ. J., MDL Dkt. No. 1470 at 6. Sharp is one of the only plaintiffs in the case that
 27 exclusively purchased CRTs from the Defendants and did not purchase CRT finished products
 28 from the Defendants. The rest of the DPP Class – of mostly indirect purchasers – would face

1 additional legal hurdles and risks that Sharp, as a direct purchaser of CRTs, would not. The Class
 2 members who purchased finished products would be required to quantify and prove the amount of
 3 pass-on damages, for example; Sharp would not. Additionally, they would be required to prove
 4 that the “ownership and control” exception set forth in *Royal Printing Co. v. Kimberly-Clark*
 5 *Corp.*, 621 F.2d 323 (9th Cir. 1980), gives them standing to bring their antitrust claims; Sharp
 6 would not. The Class members who purchased CRT finished products outside of the U.S. would
 7 be required to satisfy the standards of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and the
 8 Foreign Trade Antitrust Improvement Act of 1982, 15 U.S.C. § 6a; Sharp would not, as over 97%
 9 of Sharp’s CRT purchases occurred in the United States (with the other 3% occurring outside the
 10 United States but incorporated into televisions sold to Sharp in the United States).

11 Sharp, on the other hand, merely must show that there was anticompetitive
 12 conduct by defendants that harmed Sharp when Sharp purchased CRTs in the United States
 13 directly from the Defendants. Sharp is not required to make the additional showings required of
 14 indirect purchasers that are part of the settlement class. As a result of these additional legal
 15 hurdles that most of the DPP Class faces – but that Sharp does not – the agreed-upon recovery to
 16 the DPP Class is less than what it would be were Sharp negotiating alone, to account for
 17 additional litigation risk. Also, there is no indication that the settlement distributions would take
 18 into account these increased risks for indirect purchasers. Rather, the motion for final approval
 19 states that funds are to be distributed to claimants simply on a *pro rata* basis “determined by the
 20 CRT value of the product they purchased—tubes 100%, monitors 75% and televisions 50.”
 21 MDL Dkt. No. 2728 at 24.

22 The settlements, therefore, improperly treat direct-purchaser and indirect-
 23 purchaser claims as being on equal legal footing, which they are not.

24 ///
 25 ///
 26 ///
 27 ///

CONCLUSION

Accordingly, Sharp requests that the Court deny final approval of the class settlements. Sharp additionally requests to be heard on these objections at the fairness hearing scheduled for August 22, 2014.

DATED: August 21, 2014 By: /s/ Kenneth A. Gallo

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